IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-50103
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
October 13, 2016
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE PEQUENO-GARCIA, also known as Jose Tomas Pequeno-Garcia,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 6:15-CR-161-1

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Jose Pequeno-Garcia has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Flores*, 632 F.3d 229 (5th Cir. 2011). Counsel also moves to extend the time for filing an amended brief. Pequeno-Garcia has filed a response to the *Anders* brief and moves for the appointment of substitute counsel. We have reviewed counsel's *Anders* brief and the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

relevant portions of the record reflected therein, as well as Pequeno-Garcia's response. We concur with counsel's assessment that the appeal presents no nonfrivolous issue for appellate review.

In his response, Pequeno-Garcia first argues that his prior deportation was unlawful due to defects in the removal proceedings and therefore could not serve as a predicate for his instant illegal reentry offense. Such a challenge does not present a nonfrivolous issue for appeal because it has been waived by Pequeno-Garcia's voluntary and unconditional guilty plea. *See United States v. Daughenbaugh*, 549 F.3d 1010, 1012 (5th Cir. 2008). Pequeno-Garcia's remaining arguments challenging the calculation of his criminal history score and the substantive reasonableness of his sentence also do not raise a nonfrivolous appellate issue. *See* U.S.S.G. § 4A1.2(e)(1); U.S.S.G. § 1B1.11(a); *United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009).

Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel's motion to extend the time for filing an amended brief is DENIED AS UNNECESSARY, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2. Pequeno-Garcia's motion for the appointment of substitute counsel is DENIED. *See United States v. Wagner*, 158 F.3d 901, 902-03 (5th Cir. 1998).